

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal of Helena Tokpah  
of an Order to Pay a Fine and Order of  
Conditional License to Provide Family Child  
Care

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge James E. LaFave on July 10, 2013, at the Hennepin County Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415.

Grace C. Song, Assistant County Attorney, appeared for the Minnesota Department of Human Services (Department) and the Hennepin County Human Services Department, Child Care Licensing (County). Helena Tokpah (Licensee) appeared on her behalf and without counsel. The Office of Administrative Hearing's record closed on July 10, 2013.

**STATEMENT OF ISSUES**

1. Did the Department properly place conditions on the Licensee's family child care license for one year, pursuant to Minn. Stat. § 245A.06, subd. 1 (2012), because she violated applicable family child care laws or rules?
2. Did the Department properly order the Licensee to pay a \$200 fine, pursuant to Minn. Stat. § 245A.07, subd. 3 (2012), because it was determined on September 12, 2012, she had failed to submit a background study for an individual as required?
3. Did the Department properly order the Licensee to pay a \$400 fine, pursuant to Minn. Stat. § 245A.07, subd. 3 (2012), because it was determined she failed to ensure that two caregivers received Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome (SBS) training prior to giving care to infants?
4. Did the Department properly order the Licensee to pay a \$200 fine, pursuant to Minn. Stat. § 245A.07, subd. 3 (2012), because it was determined she failed to follow the SIDS reduction protocol when she did not have a crib sheet on the mattress of a crib used for sleeping by an infant?

## SUMMARY OF CONSLUSIONS

The Administrative Law Judge concludes the Department's Order to Pay a Fine and Order of Conditional License should be **AFFIRMED**, with a reduction in the amount of the fine.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Background

1. Licensee is from Liberia and has been a licensed family child care provider in Hennepin County since November of 2007.<sup>1</sup>

2. Licensee is taking classes in child development at Hennepin Technical Community College and has received more day care training than is required by law.<sup>2</sup>

3. Licensee's husband, John Tokpah, is a substitute caregiver who, at all times relevant to this proceeding, had received the training required by law.<sup>3</sup> In addition to other training, Mr. Tokpah received SIDS/SBS training on April 27, 2010, and he received a certificate verifying his training. In addition, he has watched the required SIDS/SBS video every year.<sup>4</sup>

4. Mr. Tokpah works nights, so during the day, while the day care operation is open, he is at home.<sup>5</sup>

5. Licensee's Mother arrived from Liberia in April of 2011.<sup>6</sup>

### 2008 Relicensing Inspection

6. The County conducted an unscheduled relicensing visit to Licensee's home on October 8, 2008.<sup>7</sup> The Licensee was issued her first Correction Order for:

- Missing drug and alcohol policy for provider, co-applicant and helpers;
- Missing crib safety inspection sheet for two of the cribs;
- Missing doctor and dentist information for Child #1 and Child #2; and
- Missing dentist information on Child #3.<sup>8</sup>

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<sup>1</sup> Testimony (Test.) of Helena Tokpah and Exhibit (Ex.) 1.

<sup>2</sup> Test. H. Tokpah and Ex. 9.

<sup>3</sup> Test. of John Tokpah, Test. of H. Tokpah, and Ex. 15.

<sup>4</sup> Exs. 7, 15, Test. of J. Tokpah and Test. of H. Tokpah.

<sup>5</sup> Test. of J. Tokpah and Test. of H. Tokpah.

<sup>6</sup> Test. of H. Tokpah.

<sup>7</sup> Ex. 2.

<sup>8</sup> Ex. 3.

7. The County considers each item on a correction order to constitute a violation of law or rule.<sup>9</sup> The correction order requires a licensee to correct the violation in a timely manner. Licensee corrected each item by October 13, 2008.<sup>10</sup>

## **2010 Licensing Inspections**

8. The Licensee and her family moved to a new home in September of 2009.<sup>11</sup> The families served by Licensee's day care urged her to continue providing care at the new home. Licensee decided to provide day care at her new home.<sup>12</sup>

9. The County made a scheduled visit on February 9, 2010, for the purpose of licensing the new residence.<sup>13</sup>

10. A follow-up visit was made by the County on February 19, 2010. As a result of that visit a second Correction Order was issued for:

- Fireplace hearth edge presents fall hazard;
- Gates required at top and bottom of stairway to upper level and stairway to lower level;
- Bottom portion of stairway to lower level is not enclosed;
- Back of stairway risers not enclosed on both stairways;
- Gate missing at bottom of stairway;
- Unprotected outlets in power strip in living room;
- Container of liquid soap missing from first aid kit;
- Furnace room is accessible to children;
- Missing an opening device outside bathroom door;
- Gate missing at bottom of deck stairway;
- Long cable cord accessible to children behind television set in living room;
- Rocks and marbles in centerpiece on coffee table present choking hazard;
- "911" and Poison Control phone numbers not posted on telephone in day care area;
- High chair with safety strap missing;
- Crib needed for infant care with crib inspection and recall check not completed;
- Door to storage cubby on lower level must be secure;
- Fire escape plan for main level required;
- List and square footage of rooms used for child care required;

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<sup>9</sup> Test. of Tim Hennessey, Hennepin County Child Care Licensing, Quality Assurance Specialist.

<sup>10</sup> Ex. 3.

<sup>11</sup> Ex. 4.

<sup>12</sup> Test. of H. Tokpah, Test. of J. Tokpah and Test. of Elizabeth Dolomengi.

<sup>13</sup> Ex. 4.

- SIDS and Shaken Baby training missing for emergency substitute; and
- Traffic hazard (85<sup>th</sup> Avenue) accessible to children.<sup>14</sup>

11. The Licensee understood the second Correction Order was just a list of things she needed to complete in order to conduct day care in her new home.<sup>15</sup>

12. The County made another relicensing visit on October 5, 2010. The County's Licensing Worker, Patty LaPointe, was told Licensee's mother was expected to immigrate from Africa (Liberia) and that it was Licensee's hope her mother could be a co-applicant on her license. Ms. LaPointe reviewed with Licensee the requirements to do that.<sup>16</sup> Licensee knew a background check for her mother was required, but based on her conversation with Ms. LaPointe understood that her mother needed a social security number before a background check could be completed.<sup>17</sup>

13. As a result of the October 5, 2010, inspection Licensee received her third Correction Order for:

- Liquid soap missing from first aid kit;
- Gate missing at bottom of deck stairway;
- Outlet covers missing in one bedroom;
- Fire drill log missing for 2010;
- Incomplete Admissions & Arrangements form missing for Child #2 on Enrollment key; dentist and doctor information missing for Child #3; emergency contact and doctor and dentist information missing for Child #5; doctor and dentist information missing for Child #6.<sup>18</sup>

14. Licensee made the required corrections by October 11, 2010 and the County recommended to the Department that the license be renewed at the "A" level, with an expiration date of November 1, 2012.<sup>19</sup>

15. Three licensing visits are usually not necessary to approve a change in residence.<sup>20</sup>

## **2012 Relicensing Inspections.**

16. The County conducted a "drop-in" renewal visit on September 12, 2012. The County's Licensing Worker, Barb Clifton, found the Licensee's mother caring for the two preschool children in the day care. The Licensee was present and spoke with Ms. Clifton. Ms. Clifton informed Licensee that her mother needs a background study and had to take SIDS and SBS training before caring for children. Licensee admitted to

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<sup>14</sup> Ex. 5.

<sup>15</sup> Test. of H. Tokpah.

<sup>16</sup> Ex. 7.

<sup>17</sup> Test. of H. Tokpah.

<sup>18</sup> Ex. 8.

<sup>19</sup> Exs. 7 and 8.

<sup>20</sup> Test. of T. Hennessey.

Ms. Clifton that her mother took care of the children when Licensee was going to school.<sup>21</sup>

17. SIDS and SBS training must be taken every five years and a video must be watched every year.<sup>22</sup>

18. Ms. Clifton noted the training Licensee had taken was “quite high.” Licensee had recently taken classes in cardio pulmonary resuscitation (CPR), First Aid, as well as four hours of other training and 19 credits of Child Development Associate courses at Hennepin Technical College.<sup>23</sup>

19. As a result of the September 12, 2012 inspection, Licensee received a fourth Correction Order for:

- Adult caregiver caring for the children (provider is not present in the home) without a background study completed;
- Adult caregiver was caring for children today without having completed SIDS/SBS training;
- Substitute caregiver is missing SIDS/SBS training certificate and has cared for the children;
- Missing dates that provider viewed the SBS video in 2011 and the dates the substitute caregiver viewed the video in 2011 and 2012;
- The provider’s CPR course expired on 9-13-11 and the provider did not renew this required safety training course until 8-18-12;
- No crib sheet available for the one mesh crib currently being used in the child care home. An infant age 8 months in care;
- No crib inspection forms for 2010, 2011, and 2012 for 2 cribs present in child care home. Provider has not checked the CPSC for recalls;
- Provider is leaving the child care home at least twice weekly to attend college classes while child care is open; toxins and hazards accessible to children on this day, including:
  - Dish soap and cleaning supplies under the kitchen sink and dish soap on the kitchen counter (Moved today). Large sharp knife left unattended on the dining room table (moved today).
  - Loose plastic and lotion in upper rear bedroom, in purse on dresser (moved today).
  - Vaseline on closet floor in rear bedroom (moved today).
  - Baby powder, hair grooming products, cocoa butter, coins, carmex and deodorant in upper front bedroom, in or on dresser (moved today).
  - Shampoo on edge of tub in upper bathroom.
- Basket of clothes, cloth purse, vacuum and dance outfit within 36 inches of the furnace and water heater;

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<sup>21</sup> Ex. 9.

<sup>22</sup> Test. of T. Hennessey.

<sup>23</sup> Ex. 9 and Test. of T. Hennessey.

- Washer plugged into power cord with multi-outlet adaptor (removed cords today);
- Missing electric face plate in basement family room;
- Missing outlet covers in living room and bedroom, (replaced today);
- Correction Order dated 10-7-10 is not posted in the child care home;
- Missing liquid soap, band aids, gauze, tape and first aid manual from First Aid kit;
- Missing batteries for radio;
- Missing bleach and water for sanitizing diaper mat. Infant in care on this day;
- Fire and storm drills have not been completed in 2011 and 2012;
- Missing admission and arrangement forms for children #3 and #4;
- Missing immunization for children #2 and #3. Missing current immunization for child #7;
- Missing travel and arrangement forms for children #1, #3, #4, and #6;
- Missing emergency medical and/or dental permission information for children #1, #2, and #3;
- Missing insurance disclosure information for children #1, #2, #4, #6, and #7;
- Missing grievance policy form for child #7;
- Missing Maltreatment Reporting policy form for children #4, #5, #6, and #7;
- Emergency telephone numbers are not posted by the telephone.<sup>24</sup>

20. One of the items listed in the Correction Order was Licensee's failure to have a background study submitted on her mother.<sup>25</sup> It was Licensee's understanding that her mother needed a social security number to have a background check.<sup>26</sup> Licensee's mother arrived in April of 2011.<sup>27</sup> Her mother immediately applied with the Department of Immigration and Naturalization Services (Department of Immigration). By Notice of Action dated April 27, 2011, the Department of Immigration acknowledged receipt of Immigrant Visa and Alien Registration.<sup>28</sup> That is the first step in the immigration process.<sup>29</sup>

21. Licensee's mother applied for a social security number on June 20, 2011.<sup>30</sup> However, she had not been issued a social security number when the "drop-in" renewal visit was made on September 12, 2012.

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<sup>24</sup> Ex. 10.

<sup>25</sup> *Id.*

<sup>26</sup> Test. of H. Tokpah.

<sup>27</sup> *Id.*

<sup>28</sup> Ex. 19.

<sup>29</sup> *Id.*

<sup>30</sup> Ex. 17.

22. Barb Clifton made a return visit to Licensee on October 17, 2012, to check compliance with the September 12, 2012, Correction Order.<sup>31</sup>

23. Though most of the items listed in the September 12, 2012, Correction Order had been fixed, several had not. A new Correction Order (Licensee's fifth) was issued on October 17, 2012, for:

- Failure to comply with the Correction Order dated 9-12-12. Multi-outlet adapter used in laundry/furnace room and clothes and box of laundry detergent within 36 inches of the hot water heater. Missing medical tape in the First Aid kit;
- Missing single use towels in the bathroom; and
- Toxins and hazards available to children, including bottle of winter green rubbing alcohol and Vaporub on floor of daughter's bedroom closet and a large black garbage bag near the floor in daughter's bedroom. 2 boxes of foil with metal cutting edge in lower kitchen cupboard and dish soap on the kitchen counter top.<sup>32</sup>

24. Licensee received support from parents served by her program. Delroy Kevin Henry has known Licensee for two years and his daughter is in Licensee's care. Mr. Henry does not believe his child is ever in danger and that Licensee is a good day care provider.<sup>33</sup>

25. Ms. Elizabeth Dolomengi also spoke on Licensee's behalf. She had known Licensee for seven to eight years. Licensee has taken care of two of her children. Ms. Dolomengi has no problems with Licensee's day care, believes her children are safe and thinks Licensee does a great job.<sup>34</sup>

26. Due to numerous violations detailed in the Correction Orders on November 26, 2012, the County recommended to the Commissioner that Licensee be placed on a conditional license for one year. The County did not recommend that the Licensee be fined.<sup>35</sup>

27. On April 10, 2013, the Department served on Licensee an Order to Pay a Fine and Order of Conditional License.<sup>36</sup> The Commissioner ordered Licensee to pay fines totaling \$800 for:

- Failure to submit a background study on an individual as required (\$200);

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<sup>31</sup> Ex. 11.

<sup>32</sup> Ex. 12.

<sup>33</sup> Test. of Delroy Kevin Henry.

<sup>34</sup> Test. of Elizabeth Dolomengi.

<sup>35</sup> Ex. 1.

<sup>36</sup> Ex. 13.

- Failure to ensure two caregivers received SIDS/SBS training before caring for infants. (\$400. \$200 per occurrence for each of two occurrences); and
- Failure to follow the SIDS reduction protocol when Licensee did not have a form fitting crib sheet on a mattress used for sleeping an infant (\$200).<sup>37</sup>

28. The Order for Conditional License was based on the pattern of violations dating back to 2008; and it would allow for closer monitoring of Licensee's home.<sup>38</sup>

29. The Licensee timely appealed the Order to Pay a Fine and Order of Conditional License.<sup>39</sup>

30. Any conclusions more properly listed a findings of fact are adopted as such.

31. Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations.<sup>40</sup>

2. The Department gave proper and timely notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. If the Department finds that a licensee has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Department may issue a correction order and an order of conditional license to the licensee.<sup>41</sup>

4. If the Department issues a dual order of conditional license and an order to pay a fine, as in this case, a licensee has a right to a contested case hearing. The scope of the contested case hearing shall include the fine and the conditional license.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> Test. of T. Hennessy.

<sup>39</sup> Ex. 14.

<sup>40</sup> Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.

<sup>41</sup> Minn. Stat. § 245A.06, subd. 1 (a).

<sup>42</sup> Minn. Stat. § 245A.06, subd. 4.



## Conditional License

5. When issuing a conditional license, the Department shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.<sup>43</sup>

6. The Department did consider these factors before it decided to impose a conditional license on Licensee.

7. The Department must demonstrate reasonable cause for a licensing sanction by submitting statements, reports, or affidavits to substantiate that the licensee failed to comply fully with applicable laws or rules. If the Department meets this burden, then the burden of proof shifts to a licensee to show by a preponderance of evidence that she was in full compliance with those laws or rules the Department alleged were violated.<sup>44</sup>

8. The Department issued Licensee five Correction Orders between October of 2008 and October of 2012.<sup>45</sup>

9. Each item on a correction order constitutes a violation of law or rule.

10. The Department has demonstrated reasonable cause through its documentary and testimonial evidence to impose a conditional license. Licensee did not demonstrate that she was in full compliance with the family care laws or rules.

11. On April 10, 2013, the Department properly placed the Licensee's family child care license on conditional status for one year pursuant to Minn. Stat. § 245A.06, subd. 1 (2012).

## Fines

12. If the Department finds that a licensee has not corrected the violations specified in the correction order or conditional license, the Department may impose a fine and order other licensing sanctions.<sup>46</sup>

13. Minn. Stat. 245C.03, subd. 1, requires a background study on all individuals over 13 years of age who live at the home where day care is provided.<sup>47</sup> In addition, background studies are required for all current or prospective employees who will have direct contact with persons served by the program.<sup>48</sup> Complete background

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<sup>43</sup> Minn. Stat. § 245A.06, subd. 1 (a).

<sup>44</sup> Minn. Stat. § 245A.08, subd. 3 (a).

<sup>45</sup> See, Finding of Fact Nos. 5, 9, 12, 17 and 19.

<sup>46</sup> Minn. Stat. § 245A.06, subd. 3.

<sup>47</sup> Minn. Stat. § 245C.03, subd. 1(2).

<sup>48</sup> Minn. Stat. § 245C.03, subd. 1(3).

study forms must be submitted to the Commissioner before the person has direct contact with children served by the day care program.<sup>49</sup>

14. The Department has demonstrated reasonable cause through its documentary and testimonial evidence that Licensee failed to submit a background study on an individual as required. Licensee did not demonstrate that she was in full compliance with the family care laws or rules. The Department properly fined Licensee \$200.

15. Minn. Stat. § 245A.50, requires that license holders document all staff persons and caregivers who receive SIDS/SBS training.<sup>50</sup> The Department alleged Licensee's mother and John Tokpah failed to receive SIDS/SBS training.<sup>51</sup>

16. The Department has demonstrated reasonable cause through its documentary and testimonial evidence that Licensee failed to document that her mother received the required SIDS/SBS training. Licensee did not demonstrate that she was in full compliance with the family care laws or rules. The Department properly fined Licensee \$200.

17. The Department has failed to establish reasonable cause to believe that Licensee violated Minn. Stat. § 245A.50, regarding the required SIDS/SBS documentation and training as to her husband. John Tokpah received SIDS/SBS training on April 27, 2010, which had previously been acknowledged by the Department.<sup>52</sup> Mr. Tokpah also watched the required video every year.<sup>53</sup>

18. Licensee established by a preponderance of the evidence that her husband had, in fact, received the training required by Minn. Stat. § 245A.50 through the credible testimony of her husband and the production of the Certificate of Training issued on April 27, 2010.<sup>54</sup> No fine should be imposed.

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<sup>49</sup> Minn. Stat. § 245C.04, subd. 1(h).

<sup>50</sup> See, Minn. Stat. § 245A.50, subd. 5.

<sup>51</sup> Ex. 9 and Test. of T. Hennessey.

<sup>52</sup> Exs. 9 and 15.

<sup>53</sup> Test. of J. Tokpah and Test. of H. Tokpah.

<sup>54</sup> Test. of J. Tokpah and Ex. 15.

19. Minn. Stat. §245A.1435, requires license holders place infants in an infant crib with a fitted crib sheet that fits tightly on the mattress.<sup>55</sup>

20. The Department has demonstrated reasonable cause through its documentary and testimonial evidence that the Licensee failed to have a form fitting sheet for the infant crib. Licensee did not demonstrate that she was in full compliance with the family care laws or rules. The Department properly fined Licensee \$200.

21. The total amount of fines properly levied against Licensee is \$600.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner **AFFIRM** the January 29, 2008 Order of Conditional Licensure and Order to Forfeit a Fine, but **REDUCE** the amount of the fine commensurate with the actual violations.

Dated: August 21, 2013

s/James E. LaFave

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JAMES E. LAFAVE

Administrative Law Judge

Reported: Digital Recorded  
No transcript prepared

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<sup>55</sup> Minn. Stat. § 245A.1435.

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64941, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

There are just two issues in this case. First, did the Department have the legal basis to place conditions on Licensee's family child care license? And second, did the Department have the legal basis to impose fines?

Licensee's appeal, however, focused on the fines.

### **Conditional License.**

The Department established a legal basis to impose conditions on Licensee's family care license. The Department relied on a four-year history of family child care rule violations and correction orders from 2008 through 2012.

Five Correction Orders were issued over that time period citing approximately fifty-five violations. Licensee does not dispute these violations; her position is that she corrected each item year after year. The law, however, permits the Commissioner to impose conditions on a family care license so long as she considers the nature, chronicity, or severity of the violation and the effect of the violation on the health, safety, or rights of persons served by the program. Here the Department has documented a history and pattern of violations.

For these reasons the Department properly placed Licensee's family child care license on conditional status for one year.

As to the fines, the Department seeks to impose \$800 of fines for the violation of three statutory regulations.

First, a \$200 fine for failing to provide a background study on Licensee's mother in violation of Minn. Stat § 245A.03, subd. 1. It is undisputed that during the inspection of September 12, 2012, Licensee's mother was staying at the home and was caring for children. The law required a background study.

The Licensee argues she thought her mother needed a social security number before a background study could be submitted. She points out that when her mother arrived in April of 2011, they promptly applied for immigrate status and in June of 2011 her mother applied for a social security number. In essence, she argues they should not be held responsible because the government did not issue the social security number.

The Department presented evidence that a social security number is not required for a background check. Background checks are performed all the time on children over thirteen years old who do not have one.

The Department established the legal basis to impose a \$200 fine.

Second, the Department seeks to impose two \$200 fines for failure to ensure Licensee's mother and husband received SIDS/SBS training in violation of Minn. Stat. § 245A.05, subd. 5. While the Department correctly determined Licensee's mother did not have the requisite training, the Department erroneously found Licensee's husband lacked the SIDS/SBS instruction.

The Department's own agent in making the October 8, 2010 inspection, noted Mr. Tokpah, had received the SIDS/SBS training on April 27, 2010.<sup>56</sup> That training was good for five years.<sup>57</sup> By the Department's own admission, Licensee's husband was current the required SIDS/SBS training as of September 12, 2012. The credible evidence introduced at hearing was that at all times relevant to this proceeding Mr. Tokpah had received the required training.

No fine for that alleged violation may be imposed.

The Department established the legal basis to impose one \$200 fine for violating Minn. Stat. § 245A.05, subd. 5.

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<sup>56</sup> See, Ex. 9.

<sup>57</sup> Test. of T. Hennessey.

Finally, the Department fined Licensee \$200 for violating the SIDS protocol found in Minn. Stat. § 245A.1435. During the September 12, 2012 inspection, it was noted the crib sheet was not form fitting as required by law. The Licensee does not dispute the fact. The Department was within its rights to impose a \$200 fine.

## **Conclusion**

As recommended by the County, the Department was justified in imposing conditions on Licensee's family child care license. While there are grounds to impose \$600 in fines, it is noteworthy that the County, when making its recommendation to the Department, only requested a conditional license.

The Licensee is clearly a devoted day care provider as evidenced by her getting day care training above and beyond that required by law, the fact she is taking college courses in child development and the support she received from parents served by her program. She expressed respect for the day care rules. The additional scrutiny and monitoring that is part of the conditional license will help her with the deficiencies in her day care operation, which is the real issue. Although Licensee testified the fines would be a financial hardship, that is not a factor the Administrative Law Judge may consider under the applicable laws or rules.

**J. E. L.**